

IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

COMPLETE TITLE OF CASE

JAMES C. BOWMAN,

Appellant,

v.

CENTRAL MISSOURI AVIATION, INC., and TREASURER OF THE STATE OF MISSOURI
AS CUSTODIAN FOR THE SECOND INJURY FUND,

Respondents.

DOCKET NUMBER WD79276

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: August 23, 2016

APPEAL FROM

The Labor and Industrial Relations Commission

JUDGES

Division Two: Mitchell, P.J., and Martin and Witt, JJ.

CONCURRING.

ATTORNEYS

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MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

JAMES C. BOWMAN,

Appellant,

v.

CENTRAL MISSOURI AVIATION, INC.,
and TREASURER OF THE STATE OF
MISSOURI AS CUSTODIAN FOR THE
SECOND INJURY FUND,

Respondents.

OPINION FILED:
August 23, 2016

WD79276

Labor and Industrial Relations Commission

Before Division Two Judges:

Karen King Mitchell, Presiding Judge, and Cynthia L.
Martin and Gary D. Witt, Judges

James Bowman appeals from a decision of the Labor and Industrial Relations Commission denying his claim for workers' compensation benefits. Bowman raises three claims on appeal: (1) the Commission erred in discrediting Bowman's medical expert; (2) the Commission erred in finding Bowman's preexisting psychological injury to be the prevailing factor in his disability; and (3) the Commission erred in finding that the Second Injury Fund had no liability to Bowman.

AFFIRMED.

Division Two holds:

1. Though it is true that the Commission may not substitute an administrative law judge's personal opinion on the question of medical causation of an injury for the uncontradicted testimony of a qualified medical expert, we defer to the Commission on issues involving the credibility of witnesses and the weight given to their testimony.
2. The findings of the Commission as to the facts, if supported by competent and substantial evidence and in the absence of fraud, shall be conclusive.

3. Where the factual basis of the expert's causation opinion was impeached, the Commission did not err in disregarding it and finding that the employee had not adequately proven the element of causation.
4. The Commission did not form its own medical opinion as to causation in this case. Instead, the Commission found that the expert's opinion was significantly impeached and was therefore not persuasive on the issue of causation.
5. The burden of proving an entitlement to compensation is on the employee.
6. An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability.
7. Here, without Bowman's expert, there was no other evidence that the 2007 work incident was the prevailing factor in causing Bowman's injury.
8. To establish Second Injury Fund (SIF) liability, the claimant must show either that (1) a preexisting partial disability combined with a disability from a subsequent injury to create permanent and total disability or (2) the two disabilities combined to result in a greater disability than that which would have resulted from the last injury by itself.
9. When a claim is made against the SIF for permanent disability compensation, statutory language and case law make it mandatory that the claimant provide evidence to support a finding, among other elements, that he had a preexisting permanent "disability."
10. The disability, whether known or unknown, must exist at the time the work-related injury was sustained and be of such seriousness as to constitute a hindrance or obstacle to employment.
11. Preexisting conditions are not denominated disabilities as of the date of the second injury simply because, at some point in the future, they combine with that injury to render the claimant permanently disabled.
12. Here, Bowman candidly acknowledges that "Dr. Daniel's opinion, as well as the vocational expert's opinion, was that [Bowman]'s pre-existing psychological condition was not a hindrance to his employment or re-employment." Without any evidence that Bowman's preexisting condition constituted a hindrance or obstacle to employment as of the 2007 work incident, there simply is no basis for SIF liability.

Opinion by: Karen King Mitchell, Presiding Judge

August 23, 2016

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THIS SUMMARY IS **UNOFFICIAL** AND SHOULD NOT BE QUOTED OR CITED.